



In this belated appeal, Orlando Dillard appeals his sentence for attempted robbery as a class B felony<sup>1</sup> and two counts of robbery as class B felonies.<sup>2</sup> Dillard raises one issue, which we restate as whether the trial court abused its discretion in sentencing him. We affirm.

The relevant facts follow. In September 2003, the State charged Dillard under Cause No. 49G03-0309-FB-150312 (“Cause No. 150312”) with: (I) attempted robbery as a class B felony; (II) unlawful possession of a firearm by a serious violent felon as a class B felony; (III) carrying a handgun without a license as a class A misdemeanor; (IV) robbery as a class B felony; (V) unlawful possession of a firearm by a serious violent felon as a class B felony; (VI) carrying a handgun without a license as a class A misdemeanor; (VII) robbery as a class B felony; (VIII) unlawful possession of a firearm by a serious violent felon as a class B felony; and (IX) carrying a handgun without a license as a class A misdemeanor. Three of the charges - robbery as a class B felony, unlawful possession of a firearm by a serious violent felon as a class B felony, carrying a handgun without a license as a class A misdemeanor - were severed from the remaining counts. Dillard was convicted of those charges, and he was sentenced to serve fifteen years in the Indiana Department of Correction. See Dillard v. State, 827 N.E.2d 570, 573 (Ind. Ct. App. 2005), trans. denied. The trial court also ordered that the fifteen-year

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<sup>1</sup> Ind. Code §§ 35-42-5-1 (2004); 35-41-5-1 (2004).

<sup>2</sup> Ind. Code § 35-42-5-1 (2004).

sentence be served consecutive to a four-year sentence imposed for a separate conviction under Cause No. 49G02-0309-FC-151958 (“Cause No. 151958”). Id. Those convictions were the subject of a separate appeal to this court. Id.

In September 2003, the State also charged Dillard under Cause No. 49G03-0309-FB-158849 (“Cause No. 158849”) with: (I) robbery as a class B felony; (II) criminal confinement as a class B felony; (III) unlawful possession of a firearm by a serious violent felon as a class B felony; and (IV) carrying a handgun without a license as a class A misdemeanor.

Dillard entered into a plea agreement regarding the remaining charges in Cause No. 150312 and the charges in Cause No. 158849. Under the plea agreement, Dillard agreed to plead guilty to attempted robbery as a class B felony and robbery as a class B felony in Cause No. 150312 and robbery as a class B felony in Cause No. 158849. The State agreed to dismiss the remaining charges. As to sentencing, the plea agreement provided: “open to argument with executed time not to exceed eleven (11) years; open to argument whether consecutive or concurrent to sentence on counts V [robbery as a class B felony] and VI [unlawful possession of a firearm as a class B felony] under [Cause No. 150312] and [Cause No. 151958].”<sup>3</sup> Appellant’s Appendix at 152; Transcript at 25.

The trial court found that Dillard’s criminal history was an aggravating factor and his guilty plea was a mitigating factor. The trial court then sentenced him to serve eleven

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<sup>3</sup> The charges were numbered differently in the charging information and on the trial court’s computer system. As a result, Count V and Count VI do not correspond to the numbers on the charging

years in the Indiana Department of Correction under Cause No. 150312 concurrent with his previous fifteen-year sentence under the same cause number. Under Cause No. 158849, the trial court sentenced Dillard to eleven years in the Indiana Department of Correction. The trial court then ordered that the sentence under Cause No. 158849 be served consecutive to the sentences in Cause No. 150312 and Cause No. 151958 for an aggregate sentence of thirty years in the Indiana Department of Correction.

The issue on appeal is whether the trial court abused its discretion in sentencing Dillard. Dillard argues that the trial court's sentence violated the terms of the plea agreement. "A plea agreement is a contract, 'an explicit agreement between the State and defendant which is binding upon both parties when accepted by the trial court.'" Griffin v. State, 756 N.E.2d 572, 574 (Ind. Ct. App. 2001) (quoting Smith v. State, 717 N.E.2d 239, 241 (Ind. Ct. App. 1999)), reh'g denied, trans. denied. Because a plea agreement is a contract, the principles of contract law can provide guidance in the consideration of plea agreements. Id. The primary goal of contract interpretation is to give effect to the parties' intent. Id. When the terms of a contract are clear and unambiguous, they are conclusive of that intent, and the court will not construe the contract or look to extrinsic evidence. Id. Rather, we will merely apply the contractual provisions. Id. Terms of a contract are not ambiguous merely because a controversy exists between the parties concerning the proper interpretation of terms. Id. Instead, ambiguity will be found in a

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information. However, Count V and Count VI refer to the charges that were severed and tried separately in Cause No. 150312.

contract only if reasonable people would find the contract subject to more than one construction. Id.

Dillard's sole argument is that the trial court sentenced him to more than the eleven-year executed term allowed under the plea agreement. However, Dillard misinterprets the trial court's statements made during the sentencing hearing.

Under the plea agreement, sentencing was "open to argument with executed time not to exceed eleven (11) years; open to argument whether consecutive or concurrent to sentence on counts V [robbery as a class B felony] and VI [unlawful possession of a firearm as a class B felony] under [Cause No. 150312] and [Cause No. 151958]." Appellant's Appendix at 152; Transcript at 25. Counts V and VI under Cause No. 150312 refer to the previously severed charges to which Dillard was sentenced to fifteen years, and Cause No. 151958 refers to the prior four-year sentence. Thus, the trial court could not sentence Dillard to more than eleven years of executed time for the charges to which Dillard was pleading guilty, i.e. attempted robbery as a class B felony and robbery as a class B felony in Cause No. 150312 and robbery as a class B felony in Cause No. 158849. However, under the plea agreement, it was within the trial court's discretion to order the sentence to be served concurrently or consecutively with the fifteen-year sentence previously imposed under Cause No. 150312 and the four-year sentence previously imposed under Cause No. 151958.

The trial court followed the plea agreement and sentenced Dillard to serve eleven years under Cause No. 150312, concurrent with his previous fifteen-year sentence under

the same cause number. Under Cause No. 158849, the trial court sentenced Dillard to eleven years in the Indiana Department of Correction to be served consecutive to the sentences in Cause No. 150312 and Cause No. 151958 for an aggregate sentence of thirty years in the Indiana Department of Correction (i.e., fifteen years plus four years plus eleven years). We conclude that the trial court properly applied the terms of the plea agreement and that the trial court did not abuse its discretion in sentencing Dillard.

For the foregoing reasons, we affirm Dillard's sentence for attempted robbery as a class B felony and two counts of robbery as class B felonies.

Affirmed.

ROBB, J. and CRONE, J. concur